

Writing Tips

Write It Right: From A to Z

Frequently misused words, phrases and spellings

By Richard A. Norris and
Fernando M. Pinguelo

Similar to the scratching of fingernails on a blackboard, there are certain frequently repeated misuses of words, phrases, and spellings that send shivers up and down our spines every time we see or hear them. We have read literally (not “literally read”) thousands of briefs, memoranda, articles and even judicial opinions, during our collective 60-plus years of practice, and on occasion have found even the most brilliant and innovative argument or theory obscured or diminished by a grammatical or lexicographic error in its presentation.

We’ve identified 26 (from A to Z) of the most common errors that plague both novice and experienced writers alike. Here are some of our “favorites”:

A. Affect/Effect. “Affect” is a verb and “effect” is (usually) a noun. It can “affect” the meaning of a sentence when one of them is used improperly, thus producing the wrong “effect.”

B. Between/Among. Use “between” when discussing two persons or objects: Rachel could not decide “between” the Audi and the BMW. Use “among” when

Norris, a founding partner at Norris McLaughlin & Marcus, concentrates his practice on litigation with an emphasis on family law, criminal, and professional liability and malpractice matters. Pinguelo, a partner and chair of the firm’s entertainment law group, devotes his practice to complex litigation, entertainment law and employment matters.

discussing three or more persons or objects: The band members could not agree “among” themselves.

C. “Criteria” and “Data” are plural, not singular. Therefore, each requires a plural verb (“are,” not “is”). The singular for “criteria” is “criterion.” No one ever uses a singular form of “data,” but it is “datum.”

D. “Different from,” not “Different than.” As a reminder, “different” and “from” both contain the letter “f.”

E. The “Each/Their” mismatch. “Each” is singular and refers to only one, not both. Don’t say: “Each” of the parties shall pay “their” counsel fees (and therefore each of the lawyers will be paid twice). Say: “Each” of the parties shall pay “his or her” counsel fees.

F. Fewer/Less. “Fewer” is used to refer to objects that can be counted; while “less” is used to refer to general quantities or sums of objects that cannot be counted: Christian played with “fewer” marbles because he had “less” floor space than anyone else. Don’t say: There were “less” than fifty people. Say: There were “fewer” than fifty people.

G. Good/Well. “Good” is used as an adjective; while “well” is used as an adverb (except when referring to health). Janine is a “good” writer who prepares “well” in order to meet her deadlines.

H. Have/Of. Use “have,” and never “of,” after the auxiliary verbs “would,” “should,” and “could”: Christopher could “have” gone home, but decided to drive to Boston instead.

I. Its/It’s. The apostrophe denotes a missing letter, not the possessive form. “It’s” is a contraction of “it is”: “It’s” going to rain. “Its” means belonging to it: “The horse broke “its” leg.

J. Juggling between “E.g.” and “I.e.”

“E.g.” is a Latin abbreviation for *exempli gratia*, which means “for example.” “E.g.” is used to introduce one or more possibilities among several: I watch all types of television programs, “e.g.,” sitcoms, dramas, reality TV, etc. “I.e.” stands for *id est* which means “that is.” “I.e.” is used when what you are introducing is equivalent to or an explanation of what comes before it in the sentence. Think of it as an alternative to using the phrase, “in other words.” I enjoy watching sitcoms, dramas, and reality TV shows, “i.e.,” I’ll watch anything on television.

K. Keep “Loose” or you may “Lose” your race. “Loose” is the opposite of tight, confined, or contained, and is an adjective. “Lose” means to miss or to suffer a loss, and is a verb. The sprinter will stretch to keep her muscles “loose” in the hopes that she won’t “lose” the race due to a pulled hamstring.

L. Lay (past tense, laid)/Lie (past tense, lay). “Lay” must always have a direct object in order for it to be used correctly, and it means to place, put, or set down: “Lay” the box on my conference table/I “laid” the box on my conference table. “Lie” cannot have a direct object, and it means to recline or remain: The box will “lie” unopened on my conference table until Alex arrives/The box “lay” unopened on my conference table until Alex arrived. Think of it this way (present tense): You “lay something”; and you “lie down/on.”

M. Misuse Singular with Plural. Don’t say: The “parties” may agree upon the selection of a joint valuation expert so long as “they are” qualified by experience and training. Why do the parties have to be qualified? Say: The “parties” may agree upon the selection of a joint valuation expert so long as “he or she is” qualified by experience and training.

N. “None,” “Anyone,” and “Everyone” are singular, not plural. They

each contain “one” to remind you they are singular: Although “none” of them “is” available for an interview, “everyone sees” the value of connecting with “anyone” of them who “is” open to listen to what our company has to offer.

O. The misplaced “Only” (three examples). 1) Don’t say: Defendant “only” turned his lights on after the collision (and therefore did nothing else). Say: Defendant turned his lights on “only” after the collision. 2) Don’t say: He “only” drinks water (and therefore does nothing else with it ... such as washing). Say: He drinks “only” water. 3) Don’t say: He “only” steals when he is hungry (but he might be better off if he ate something). Say: He steals “only” when he is hungry.

P. Principal/Principle. As a matter of “principle,” use “principal” only when you mean most important or when you are referring to an amount of debt or investment (as distinguished from interest). As a reminder, “principle” and “rule” each end in “le.”

Q. Question the “Advice” of those who are not trained to “Advise.” Although these words are similar in meaning, “advice” is the noun and “advise” is the verb. Jill sought “advice” about her legal issue from Dan who never thought to “advise” her of the consequences of her inaction.

R. Misuse of the Reflexive. Don’t say: “Both Steve and myself” will work on your case. (Use “I,” not “myself.”) Don’t say: The court appointed “Judge Jones and myself”; or “Everyone was present including myself.” (Use “me,” not “myself,” in both examples.)

S. Superfluous preamble. Don’t say: “The reason why the statute is unconstitutional is because it violates the Equal Protection provision of the Fourteenth Amendment.” (Use either “The reason why” or “because,” but not both). Say: “The statute is unconstitutional because it violates” the Equal Protection provision of the Fourteenth Amendment; or “The reason why the statute is unconstitutional is that it violates” the Equal Protection provision of the Fourteenth Amendment.

T. Then/Than. “Then” has numerous meanings including: at a point in time, next, afterward, in addition, and also: Johnny wasn’t ready “then.” Do your homework “and then you can go outside.” The laptop cost \$3,500, “and then there’s the service contract, too.” “Than” is used for comparisons: “He is taller than you.” “Your word is more important than you think.” “Rather than drive to the store, why not walk?”

U. Use/Utilize. Don’t fall into the trap of trying to impress others by “using” technical-sounding words when simple ones will do. The “use” of “utilize” is one such common pitfall. Although dictionaries often equate the two words, each has a distinct meaning. To “utilize” something is to make do with something not normally used for the purpose: Marc “utilized” a butter knife to unscrew the cover because he couldn’t find the screwdriver he would normally “use.” So, use “use” whenever possible.

V. The Vague Reference. Don’t say: “Running down the street, I saw a dog.” (Which one is doing the running?) Say: “I saw a dog running down the street,” or

“while running down the street, I saw a dog.”

W. “Whether,” not “If.” Don’t say: He could not possibly have known “if” the door was locked. (Known what? Would he have known it if the door had been unlocked?) Say: “He could not possibly have known “whether” the door was locked.

X. X marks the spot: Farther/Further. When marking geographical distances, use “farther”; and when showing other additions, use “further.” Since it appears that the rest stop is “farther” away than initially thought, we can discuss our meeting’s agenda “further.”

Y. Your/You’re. “Your” is a possessive adjective used to describe something as belonging to you and is generally followed by a noun: “Your” assistant left for the day. In contrast, “you’re” is a contraction of “you are”: “You’re” going to be late if you don’t leave soon.

Z. Zig-Zag through the confusion of “They’re/There/Their.” Although “they’re, there and their” sound the same, each has a meaning very different from the others. “They’re” is a contraction of “they are”; “their” means “belonging to them”; and all other circumstances warrant the use of “there.” “They’re” planning to take “their” boat to that island over “there.”

There you have it. Keep these simple rules in mind and you’ll be all right! (Yes, “all right,” and not “alright” because “alright” is not a word).

Editor’s note: Kenneth F. Oettle’s column, “Making Your Point: A Guide to Persuasive Legal Writing,” will return on Oct. 29. ■